

**MINUTES**  
of the  
**LEGISLATIVE CONSUMER COMMITTEE**  
September 23, 2003  
State Capitol, Room 137– Helena, MT

**COMMITTEE MEMBERS PRESENT**

Senator Walter McNutt, Chairman  
Representative Gary Matthews, Vice Chairman  
Senator Debbie Shea  
Representative Alan Olson

**STAFF PRESENT**

Robert A. Nelson, Consumer Counsel  
Frank E. Buckley, Utility Analyst  
Mary Wright, Attorney  
Larry Nordell, Economist  
Mandi Shulund, Secretary

**VISITORS PRESENT**

Mary Vandenbosch, Legislative Services Division  
E.J. Redding, MDU Resources  
Dennis Lopach, NorthWestern Energy  
Steve Vick, Public Service Commission

**Call to Order**

The meeting was called to order by Chairman McNutt.

**Minutes of the Previous Meetings**

MOTION: Senator Shea moved approval of the minutes of the June 18, 2003 meeting.

VOTE: The motions passed unanimously.

**NorthWestern Energy – Bankruptcy Discussion**

Bob Nelson introduced Dennis Lopach of NorthWestern Energy (NWE) who gave an overview of the NWE bankruptcy proceedings. Mr. Lopach presented the committee with a handout that outlined the events that have taken place thus far and projections for the

future. Mr. Lopach stated that, in general, NWE employees are very positive about the Chapter 11 filing, but there are mixed feelings. Bankruptcy is viewed as a bad thing, especially for the stockholders who will lose their investments, but it can also have tremendous advantages such as the restructuring process and moving a billion dollars in debt off of the balance sheet. When bankruptcy is filed, claims against the company are stayed and NWE has taken the position that the MCC Petition for Financial Investigation and any dockets consolidated with it are stayed as well, but the Public Service Commission (PSC) will ultimately make that decision. The bankruptcy process will move quickly along with huge amounts of information being generated and NWE would like to shape a regulatory agenda that works off of this information and deals with major issues in the most efficient way. MCC's Petition for Investigation expressed concern with the commingling of utility and non-utility resources, revenues and assets. NWE is concentrating on the utility and spinning-off the non-utilities quickly yet consistent with getting as much money possible for the non-utility businesses. Clark Fork and Black Foot, LLC will not be part of the bankruptcy in order to keep Milltown a separate issue, which was one of NWE's objectives. One week before bankruptcy was filed, NWE brought their property taxes current, put \$10 million into the pension fund and asked the court for permission to continue the retiree health plan, unaffected by the bankruptcy. These actions proved NWE's commitment to take care of their obligations. Also, \$100 million in financing has been arranged through BankOne Corporation at 4.3% interest. According to the bankruptcy code, regulatory authorities will still determine rates and at the same time, the PSC is considering the stay of a number of current dockets. NWE recently filed materials with the PSC that said most proceedings before the PSC are unaffected except for staff being preoccupied with the bankruptcy. In the next 120 days, NWE's complete financial information, projections and plan will be filed in the bankruptcy court. The plan will be a detailed proposal on how the utility will be structured and operated, but what happens beyond that depends on reactions from other parties in the proceeding. NWE is spending roughly \$750,000 per week for attorneys and advisors plus there are other costs coming out of the bankruptcy estate so NWE would like to get through this quickly in order to stop having to make those payments. The NWE Technical Advisory Committee on Electric Procurement is currently working on a resource plan regarding NWE electric resources. This committee has a consultant

reviewing the information and a plan is scheduled for filing around 11/1/03. Part of this filing will be a resource plan to the PSC and part will be individual generation projects. Based on the findings of SB247 from the 2003 legislative session, NWE is going to ask the PSC to endorse these projects if they find the quantity, prices and terms in the public interest. Because of credit issues, the procurement process has stopped but NWE expects to come in with a few gas projects, one being the Basin Creek project out of Butte, which NWE thinks could be a very beneficial. There is a filing before The Federal Energy Regulatory Commission (FERC) regarding the Great Falls plant to allow the buyer of that project to sell power back to the default supply on a cost basis. The NWE Technical Advisory Committee is looking into the economics of coal v. wind and a wind/gas combination. All of these projects could go forward but at some point NWE will be asking the court to approve contracts and if not, NWE will be able to assign them simply as a matter of conducting ordinary business. NWE is dealing with criticism of exposing customers to the spot market but in the mean time would like to get more power supply under long-term contracts and plan to replace the PPL contracts in 2007. There is a lot of work to be done and NWE will work with MCC on a timeframe to address MCC's informational needs and the basic business of rates and prices, gas and power supply, and any other issues that are still forthcoming. Senator McNutt asked for verification on how NWE planned on moving a billion dollars in debt off of the balance sheet. Mr. Lopach responded by saying that this would be a debt for equity swap, which is the main part of the plan. The secured creditors, roughly \$900 million of secured debt, are unaffected by the bankruptcy and their payments will continue during the proceeding. The unsecured creditors will be affected and will ultimately swap their claims for the equity and the business all under the auspices of the court. The unsecured creditors are mostly hedge funds, or funds that have been acquiring the debt as NWE has struggled in recent months, and they have accumulated the debt in anticipation of the opportunity to swap it for equity at the end of the bankruptcy process and do view this as a beneficial investment for them and want to get this done as quickly and directly as possible. Bob asked Mr. Lopach how the impacts of the restructuring, the debt for equity swap, and the administrative costs of bankruptcy will be on rates and what the long-term effects will be. Mr. Lopach wasn't aware of anything that would drive rates up or down and he felt that PSC had extensive powers in

rate making to deal with any unusual conditions. Bob asked Mr. Lopach if there is any interest or thought of changing ownership or operational control as a result of the bankruptcy proceeding. Mr. Lopach stated that NWE is in Chapter 11, not Chapter 7, and feels that the business has great value, structured as a utility, and feels that the creditors share this view. Right now, there is no interest in selling the business, or pieces of the business. However, an offer may come in that the creditors find attractive, and that offer would probably be looked at and discussed. Right now, Mr. Lopach feels that it is unlikely that there will be substantial changes in structure. Bob asked Mr. Lopach if he anticipated that the hedge funds and the other unsecured creditors are going to own the stock and eventually trade it over the normal course of business. Mr. Lopach felt that would be likely and that in Chapter 11, 85% of businesses fail in the end but he sees no reason for that to happen this time due to a healthy cash flow. A problem, however, is the overhanging debt from the non-utility diversifications and once this is dealt with, he doesn't see why NWE cannot be healthy and possibly expand.

**BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING:**

**NorthWestern Energy**

D2002.11.140 – NWE Gas Tracker Filing: The PSC issued Final Order 6468c on 7/3/03, by a vote of 3-2. This application was for roughly a 35% increase. The key issue was the finding of prudence with respect to NWE's purchasing practices and the PSC did find imprudence for a portion of the gas supply. NWE had switched basically to a short-term market purchasing strategy for 100% of their supply and after looking at this change, the PSC found that historically NWE had 50% in fixed contracts that they had just gone through an expiration of a fixed price buy back contract. MCC had participated in negotiations with NWE several years earlier that had covered 42% of their supply that had provided stable prices. NWE knew that gas prices were volatile, especially in the prior year leading up to this tracker, and the PSC had established a long-standing goal of price stability. For this portion of their supply, the PSC felt that they should have had 4.2 bcf in long term contracts for one year and another 4.2 bcf in two year contracts and, had NWE done this in the time period when the buy back was expiring, they could have purchased gas for \$3.50/dkt. For

this tracking period, the interim rate, which had approved the 35% increase, was finalized and the impact of this finding became more of a consideration in the following tracker. The PSC also accepted the recommendation of George Donkin, MCC's witness, to establish a gas working committee to basically do the same thing for gas purchasing practices that the PSC had done for electric procurement practices and discuss the trade offs of rate stability v. low cost purchases and what kind of hedging mechanisms the companies should employ.

D2003.6.66 – Current NWE Gas Tracker Filing: This application was for a 45% increase and the PSC ended up disallowing a significant portion of these purchases because NWE exceeded the \$3.50 limit for the volumes that they had found imprudently left uncontracted in the prior tracker. This would amount roughly to a \$6 million disallowance and NWE estimates an equivalent disallowance in the future. NWE has filed a petition for judicial review of the first tracker order so that is currently up to the district court judge. The PSC has concern about the gas storage situation due to NWE's financial issues and has been requiring bi-weekly reports to ensure that there is sufficient gas purchased and injected into storage. So far storage levels seem to be adequate. Representative Matthews asked Bob if MDU customers were currently paying more than NWE customers and if this would have any effect on the PSC rejecting this increase. Representative Matthews also asked Bob why the PSC wasn't accountable for the prices that MDU customers were paying and what the price difference was. Bob felt this would become an issue before the court. At least for MDU, this kind of purchase practice has been deemed prudent in the past and MCC supported establishing a working committee to develop some guidelines. Representative Matthews asked how the Bankruptcy Court in Delaware is viewing the PSC disallowing a potential \$12 million and asked if the PSC has made any filings in the Bankruptcy Court that will cause the State of Montana any problems. Bob didn't think so at this point and said that MCC's view on the regulatory affairs is that the automatic stay does not operate to stop regulatory proceedings and that the bankruptcy court is aware that there are regulatory authorities that need to continue.

D2003.8.109 – MCC Petition for Investigation: This petition was filed on 8/13/03 and seeks an investigation of several items, including capital structure, corporate structure, cash management, affiliate transactions and development of regulatory controls necessary to ensure reasonable rates and adequate reliable service. In this filing MCC requested the production of information necessary to establish the relationship between NWE's financial situation and the rates and services that the PSC has jurisdiction over. MCC also made several specific suggestions for items that the PSC could consider as part of the remedies for the end of this docket, including the reversal of certain transactions, the separation of the utility (ring fencing) and the adoption of some cost allocation procedures, recording requirements and principles governing future financing in terms of how debt and equity and the capital structure are allocated to various components of NWE. The PSC issued Order 6505 initiating the investigation on 8/22/03 and has consolidated it with another petition for segregation of Qualifying Facility (QF) funds. NWE filed its response on 9/9/03, generally arguing that the PSC lacks authority to grant the relief requested in the investigation but did acknowledge that the PSC could actually proceed with the investigation. MCC has received some information from NWE that responds to the request for information and is working with NWE on the remaining information. NWE did file a notice of stay on 9/22/03, saying that the investigation is subject to the automatic stay in bankruptcy, but as Mr. Lopach said, information will be made available largely through the bankruptcy proceeding. MCC's believes that the automatic stay does not affect this proceeding and that, while there may be some pre-emption with respect to the remedies suggested that would have to be worked out in the future, the PSC does have the authority to continue processing that docket.

D2003.8.114 – Petition to Segregate the Universal Systems Benefits: MCC filed a joint petition with Energy Share of Montana and the Large Customer Group on 8/12/03 asking the PSC to enter certain findings with respect to the Universal Systems Benefits (USB) funds and to order those funds be held in a separate interest bearing account. Part of the rationale of this was to protect those funds in the event of a bankruptcy filing. The PSC did issue Proposed Order 6504 on 8/22/03 adopting the request, stating it would become effective on the 21<sup>st</sup> day following issuance, and allowing 20 days for objections. NWE filed an objection on 9/12/03, in effect preventing the order from becoming finalized before they

filed bankruptcy on 9/14/03. This docket is currently stayed because there has been a notice of bankruptcy filing.

D2003.8.121 – NorthWestern Energy Qualifying Facility Fund Segregation Request:

Colstrip Energy Limited Partnership (CELP) and Yellowstone Energy Limited Partnership (YELP), two large QF producers who sought segregation of the payments that NWE was receiving with respect to the QF contracts, filed a petition on 9/4/03 to consolidate this docket with D2003.8.109, the MCC Petition for Investigation. As Mr. Lopach indicated, this issue is also implicated in the bankruptcy because it is similar to a creditor seeking to protect the portion of the cash flow for payment of their claims. The PSC did consolidate the two dockets on 9/10/03. Senator McNutt asked Bob what the status of the USB funds was. It is Bob's understanding that there was no separate account set up for the USB funds but in the preliminary motions of the bankruptcy filing, NWE did request constructive trust treatment of those funds so that they could continue to be paid and Bob believes that an order approving this motion had been granted. Mr. Lopach added that the first day motions basically asked the court to treat these USB revenues not as a part of the bankruptcy estate, and that has been approved so there should be no impact on the USB funds. Bob said that MCC did participate in discussions with NWE personnel staff and is interested in the allocation of the funds and the availability for low-income assistance. The Governor's Advisory Committee has made a recommendation to the PSC that these funds be applied largely for low-income assistance and it turns out that there is a substantial amount of unassigned funds available for low income assistance from prior years' failed projects. MCC will continue to follow this, but there may need to be a filing before the PSC in order for the allocation of this money to go to low-income programs. Senator Shea asked what projects had failed in the prior year. Representative Olson said that approximately \$1 million of that money was for the Blackfeet Wind Generation project that never materialized. He and Representative Fuchs requested information from the Legislative Audit Division on whether or not the Department of Revenue (DOR) is fulfilling their duties of distributing the money and holding unexpended amounts. This information should be made available at the next Energy Committee Meeting. Senator Shea asked why the Blackfeet Wind Generation Project was delayed and Representative Olson didn't think

that any reason was given. Mr. Lopach added that Seawest was developing the project and money was set aside to pay the out of market costs. Negotiations with BPA were in place to purchase the power and then BPA pulled out of the process. It was decided that the money set aside for this project was to be pulled out of the renewable category and be re-designated to low-income assistance. Bob said that the PSC does go through a proceeding to allocate the USB funds within some broad parameters that are set forth in statutes so they have general direction over what types of programs these funds go to. There is a USB committee set up that advises NWE on particular projects within these allocations. Senator Shea asked if the allocation of these funds would ever come before the legislature. Bob said that it is not up to anyone to redistribute the money outside of the allocations that are set by the legislature and the PSC does make some general allocations due to filings made before them and if there are oppositions to these allocations, they are discussed further. The PSC then issues an order and there are annual reports submitted to the DOR and PSC about where expenditures have been made. Representative Matthews said that statute states 17% must be spent on low income assistance, but it is usually ends up being 23% and the rest of the allocation goes toward approved conservation projects.

FERC Docket ES-03-044 – Petition for Securities Issuance: NWE filed this petition on 8/8/03 requesting authorization to issue debt of \$775 million and additional stock for the debt/equity swap plan that NWE was pursuing. MCC intervened and filed comments on 8/15/03, focusing on protections with respect to future allocation of the debt and capital structure to the utility v. non-utility subsidiaries and how these issues would be worked out in the future. NWE recently filed a notice of withdrawal of this petition.

Case No. 03-12872 - U.S. Bankruptcy Court, District of Delaware: NWE voluntarily filed a petition for Chapter 11 Reorganization on 9/14/03. Mr. Lopach covered this case earlier in the meeting.

NWE Technical Advisory Committee: Larry Nordell is active on this committee and as Mr. Lopach mentioned, there has been a consultant, David LeVee, hired to assist in working through alternative resource plans. Larry added that the reason the committee asked to



hire a consultant was because of concern with the opacity of NWE's modeling structure and the committee wanted an independent view. Bob said that the consultant is being paid by NWE but is working on behalf of this committee that involves several other parties. MCC's participation on this committee is partly due to the interest in pre-approval or advanced approval and about getting ahead to the extent possible in anticipation of the resource proposals that will be filed.

D2003.7.97 – NWE Monthly Gas Trackers: The three major gas utilities are now on monthly tracker programs. For August, September and October, there has been a slight decrease in each of these three months for NWE.

D2003.6.77 – NWE Monthly Electric Tracker: NWE is now on a monthly electric tracker program. For September and October there had been some slight decreases for the electricity commodity portion.

D2003.7.86 – NWE Annual Avoided Cost Compliance Filing: This filing was made on 6/30/03 and relates largely to the long term QF's. There are certain elements of the pricing provisions in those contracts that are subject to escalators or adjustments. These annual filings are updates to those escalators and MCC has been monitoring the QF filings. Representative Matthews stated that there were approximately 15 facilities with contracts up to 30 years and the cost to the consumer was \$320 million. Representative Matthews asked Bob if that was over and above the price of what electricity would be. Bob said that the QF costs were a large issue in the Tier II part of the Montana Power Company Restructuring docket and this issue was decided contemporaneously with the sale to NWE. The above market portion of the QF contracts and the projected market rates were looked at and the portion of this that was out of market was separated and became a component of the stranded costs and is being recovered in the competitive transition charges, which relates to the recovery of those above market costs and that about \$240 million was the net amount recovered.

FERC Docket RT01-35 – RTO West: MCC has intervened and filed comments in this docket and has participated in many FERC matters related to regional transmission planning in general. The most recent issue discussed was the FERC Standard Market Design (SMD) proceeding. FERC has backed off a little from this effort and has reemphasized the RTO formations and Bob feels that this has reinvigorated the interest in RTO West. Larry has been participating in the discussions with the regional representatives group trying to get this effort back on track. MCC's participation is focusing on NWE's transmission and distribution business as well as the bankruptcy issues but MCC still sees the biggest issues and problems facing rates in general are the commodity markets and supply portions.

### **Montana Dakota Utilities**

D2003.8.120 – Application to Increase Electric Rates: This filing was made on 8/22/03 and is the first electric filing in over 15 years. MDU is requesting a 10.7% overall increase within their classes so the residential customer and small general service customers would get a 20-25% increase. The increase in the rates is almost entirely in the service charge component of the bill and there is going to be a lot of cost allocation and rate design issues in this docket, which is currently in the discovery phase.

D2003.7.95, D2003.8.108, D2003.9.132 - MDU Monthly Gas Trackers: In the past few months there has generally been a downward trend, with a current rate of just over \$7.00 a dkt, which is about where NWE is now. It is hard to compare MDU and NWE the rates because there is an un-recovered, un-reflected piece in NWE's rates that is not in MDU's because MDU has had a monthly tracker for quite some.

D2003.9.135 – MDU Biennial Electric Integrated Resource Plan: MDU is obligated under Montana law to submit to the PSC a Biennial Electric Integrated Resource Plan, which the PSC reviews and comments on what the developing resource proposals are. MCC will review this filing and will file comments if necessary.

RP00-107-000 – Williston Basin: Williston Basin is the pipeline subsidiary of MDU Resources. MCC has been following Williston Basin issues for the past 20 years, ever since their restructuring. This is a general rate case filed three years ago that MCC has participated in. An order issued on 7/3/03 resulted in a refund of around \$12.2 million and a rate reduction of about \$6.1 million. Montana received roughly 1/3 of that amount, so the refund for Montana MDU customers should be around \$3.6 million and a \$2 million reduction going forward in charges from Williston to MDU. Williston Basin submitted a refund report that basically presents their view of obligations under the order. There have been other requests for rehearing filed by Williston Basin and other parties. This process has slowed down the payment of this refund, so right now MCC is considering ways to free up at least the uncontested portion of the refund and will probably make a filing with FERC seeking to get this refund in place for the upcoming heating season.

### **Energy West Resources**

Property Tax Dispute: Energy West Resources (EWR) is the parent company of Great Falls Gas. They have had a property tax dispute with the DOR for quite some time but recently settled this dispute. The settlement will result in an increased tax liability of around \$200,000 per year plus a 10-year retroactive liability. EWR had entered into discussions with MCC regarding settlements to flow those property tax charges through to rates and MCC indicated that HB642 in the 2003 legislative session basically allows them to set up a tracking process for those property tax payments. To date no filing has been made.

D2003.6.75 – Great Falls and West Yellowstone Annual Tracker: MCC is reviewing the gas purchase practices and auditing the monthly trackers that have occurred in the preceding year. MCC recently filed discovery.

D2003.7.93 – Energy West Montana Monthly Gas Tracker: There has been a decrease lately in prices for Energy West Montana, with the current rate being \$6.2119 mcf.

### **Mountain Water Company**

D2003.8.122 – Mountain Water Company Annual Power Cost Tracking Adjustment: MCC agreed to a power cost tracking adjustment in Mountain Water Company's (MWC) last docket on an experimental basis because they were concerned with the fluctuations they would be exposed to now in electricity costs, which was a large portion of their cost structure. MWC just filed their first annual power cost tracking adjustment and are seeking a \$240,000 increase, which would result in about a 1.9% increase in water rates for their customers. MCC did intervene in this case.

### **Havre Pipeline**

D2003.8.101 – Havre Pipeline: Havre Pipeline provides some regulated gas sales to retail customers along their pipeline. There is very little administrative cost in their rates. They try to track changes in their commodity costs and like other utilities, they have experienced a very large increase in their commodity costs and are requesting a 91% increase in their rates. Because their rates are basically all commodity related, this increase would raise them up to \$3.9063/mcf. MCC is reviewing this filing.

### **FERC**

MCC is trying to address the market power and market structure issues as part of the overall picture in Montana. MCC is involved in some FERC dockets, and in these cases are trying to get FERC to focus on market power problems with respect to PPLM and hopefully doing something with their market base rate authority so there may be some control of the wholesale market costs in Montana.

EL01-118-000 – FERC Investigation of Terms and Conditions of Market Based Rate Authorization: MCC intervened in this docket on 1/7/02 and filed comments regarding PPLM's market power. FERC issued an order proposing some generic terms to include in market based rate tariffs. MCC filed comments on these generic terms, which would all have prospective effect for utilities that are granted market based rate authorization. MCC discussed the need to strengthen the penalties for market manipulation in those tariffs and

allowing additional time for parties, such as MCC, to discover problems and file complaints. Also discussed in MCC's comments were PPLM's market power issues and the need for FERC to issue a show cause order, ultimately seeking the revocation of PPLM's market based rate authorization.

ER00-1712-003 – PPL Electric Utilities Corp: The FERC has the authority to regulate wholesale generators on a cost of service basis and they have an obligation to ensure that wholesale rates are just and reasonable. MCC intervened and submitted comments because, in passing, this filing did discuss the PPLM subsidiary in Montana. MCC will submit a filing updating FERC on the market situation and request a show cause order regarding PPLM's market based rate authorization.

## **QWEST**

QLDC03-04 – Qwest New Intrastate Long Distance: There has been an effort on Qwest's part to establish long distance service in Montana which MCC has supported but there has been debate over specific terms of these tariffs that hopefully will get resolved within the next year. The most time consuming issue regarding Qwest right now is the PSC's effort to investigate their earnings. The PSC initiated an investigation and established this docket, which MCC intervened in. The PSC sought some information from Qwest and they have asserted that the PSC does not have jurisdiction to initiate a review of the just and reasonableness of its existing rates that were previously approved by the PSC.

Cause No. BDV-2003-465 – PSC v. Qwest: & Cause No. BDV-2003-464 – Qwest v. PSC: The PSC went to district court seeking enforcement of its orders and at the same time Qwest went to district court seeking to prevent the PSC from enforcing its orders. MCC has petitioned to be joined as a party in both of these proceedings. These are important cases, not only because of Qwest's rates, which haven't been reviewed for quite some time, but because of the general authority of the PSC to take the initiative to investigate rates. MCC has always felt the PSC had the authority to do this, but this has never actually been fully tested. The PSC is relying in part on its general supervisory authority and the specific requirement that rates are just and reasonable.

CDV-2003-273 – Ronan Telephone v. Montana Public Service Regulation: & Cause No. CV-03-20-H-CCL - Ronan Telephone v. Montana Public Service Regulation: The PSC's order was appealed by Ronan Telephone in both federal and district court and MCC has filed motions to become parties in these proceedings, which have been granted.

D2003.4.46 & D2003.5.62 – FCC Triennial Review: These filings relate to the offering of unbundled network elements (UNE), primarily the switches and the loops. The incumbent companies, such as Qwest, are currently required to offer those elements on an unbundled basis to competitors. The PSC goes through dockets to set prices for the unbundled network elements and the Federal Communications Commission (FCC) has been reviewing whether the incumbent company should continue to be required to offer those unbundled elements. FERC has said that the state commissions are going to have an obligation to address this issue with respect to two different market segments, the first being the enterprise market, which is the very large switches and large loops for large business customers. Basically the FCC is saying that there is sufficient competition and that these elements don't have to be offered on an unbundled basis for the large enterprise customer. The FCC is allowing the states 90 days to review those conclusions and so far there doesn't seem to be much debate over this issue. The second segment is the smaller markets, for residential and small business customers. The FCC is allowing the states 9 months to review these issues and have set forth specific triggers that they want the PSC to look at to determine whether those triggers are met and there is sufficient competition to allow the incumbent companies to not offer those unbundled network elements. At the same time, a lot of appeals have been filed in various circuit courts and so it may be awhile before these things actually need to be addressed so the timing is pretty uncertain. At this point the PSC has, because they only have 9 months, gone ahead and are acting as if they have to address these issues in the 9 months. MCC has intervened in both of these dockets and will be participating.

D2003.1.14 – Western Wireless Cellular Petition for Eligible Telecommunications Carrier: Western Wireless has filed a petition for designation as an Eligible Telecommunication

Carrier (ETC) in Montana areas served by Qwest. The ETC status is required in order to receive Universal Service Funding and there are certain requirements that must be met before state commissions can designate carriers as ETC's. MCC feels that ETC's can be advantageous to consumers as long as these requirements are met. MCC has intervened in this docket that is currently in the discovery phase.

### **Legislation**

N2003.6.82 – Implementation of HB641/580: These bills relate to the alternative dispute resolution, or expedited dispute resolution process for interconnection agreements. HB641 related to requiring carriers who originate traffic to provide information to the terminating carriers. The PSC had an inquiry about who should pay the costs of providing the information and what records were necessary. MCC did file comments, generally saying that the party receiving revenues as a result of this process should participate in paying for the cost and that the complaint proceedings for HB641 process should follow complaint proceedings that were specified in HB580. Mary added that the PSC has voted to issue the proposed regulations for public comment and they are to be published soon.

D2003.8.106 – Implementation of SB247: This bill is pretty explicit on certain parts of the pre-approval process and what needs to be done. The PSC was interested in some alternatives to the advanced approval process and asked for comments on alternatives they set out on what the pre process envisioned by this bill should look like. MCC filed comments, basically asking that the PSC closely follow what SB247 required. There was an informal roundtable on that, and the PSC has another roundtable scheduled.

D2003.7.87 – Attorney General's Petition to the PSC and Complaint in State District Court: The Attorney General is asking the PSC to issue refunds to customers as a result of market manipulation that occurred in 2000 and 2001 as evidenced by FERC's investigation of the markets in the Western United States, particularly in Southern California. In 2000 and 2001, most customers in Montana were protected by the rate moratorium that was in place because of SB390, so to the extent that there was any market manipulation that could be proven, it would be difficult to assert that there was an impact on those rates. Flathead

Electric is a joint petitioner here and the same situation could apply to them because they also were technically subject to the rate moratorium. The protection there was basically surrendered when the sale occurred, when Flathead Electric, an unregulated cooperative, took over for PacifiCorp, which was the company that was subject to the rate moratorium. The Attorney General's office has also filed a complaint in district court seeking an injunction against manipulative practices and treble damages, which they hope to ultimately be able to prove. There are some actions going on in other states' Attorney's General offices, especially in Western states where they have sought damages regarding market manipulation.

### **Touch America**

Y04-04-012 – Touch America Bankruptcy: This case is basically finished, but MCC did participate in this docket to a small extent, along with the PSC. MCC was interested in the few remaining customers that Touch America had and how the assets that were used to serve those customers would be distributed and how service to those customers would be continued. MCC participated through Jim Screnar with the Attorney General's Legal Services Division and their local counsel in Delaware.

### **Financial Report**

The financial summary for August 2003 was presented. The first few months of the fiscal year don't provide much information since many of MCC's expenditures run a few months behind, especially in contracted services, which is the largest area. There are no problems emerging at this point and contracted service will be watched closely this year. It is going to be hard to estimate the cost of the bankruptcy case but it is a good guess that the entire contracted services base budget will be spent, as will a good portion of the \$250,000 contingency fund. There is also potential for a carry forward of \$115,000 of unexpended funds from fiscal year 2003. Not only is the bankruptcy activity unclear, the pre approval applications will need to be reviewed to determine what kind of services will be needed.



## **Hiring of Expert Witnesses**

**MOTION:** Representative Olson moved approval to retain the services of Jim Screnar for work in the Touch American Bankruptcy Docket.

**VOTE:** The motion passed unanimously.

**MOTION:** Senator Shea moved approval to retain the services of John Wilson for work in the FERC PPLM Market Rate Authority Docket.

**VOTE:** The motion passed unanimously.

In the bankruptcy docket, Bob requested approval to retain John Wilson and John Coyle of Duncan and Allen. Representative Olson asked Bob why there needs to be separate counsel for MCC, PSC, Attorney General's Office and the Governor's Office. At the end of this process there may be the need for the PSC to hold some kind of rate proceeding to set rates that will determine the feasibility of any restructuring plans, and there would need to be the appearance and reality of some separation between the decision maker and MCC, which will be a party, otherwise the PSC would be subject to claims of bias. Representative Olson asked if the PSC would use their own legal staff during this rate making process. Bob assumed they would but it may depend on issues of jurisdiction regarding the bankruptcy v. the PSC. It is unclear right now who ultimately will have some of this authority to set rates so there may be some filings and activity that the PSC will need to address before the bankruptcy court. Representative Olson asked if there was any chance of competing interests before the bankruptcy court. Bob said that where interests align, agencies will work together, but there will be areas of adverse interests. Representative Olson asked if those adverse interests would be better worked out at a different time other than in bankruptcy court. Bob wasn't sure at this point, but felt MCC would want to preserve their interests and ratepayers interests. Senator McNutt added that there will be competing interests at some point, but MCC will naturally have ratepayers interests in mind and will do what needs to be done when interests align and when they don't. Bob said that the

Attorney General's office assured him that they would be available to assist MCC and will bring the work back to the agencies to save on cost whenever possible. Representative Olson agrees that the ratepayers interests need to be represented, but feels that the same common goal should be focused on, not only the ratepayers but all citizens in the state. Representative Olson asked Bob what standing MCC will need to have in order to participate in the bankruptcy. Bob said that there are various levels of participation in a bankruptcy proceeding, the most obvious being as a creditor. The next level is party-in-interest status. MCC has a tentative stipulation from NWE that MCC be deemed party-in-interest status along with the PSC.

MOTION: Senator Shea moved approval to retain the services of John Wilson and John Coyle for work in the NorthWestern Energy Financial Investigation and Bankruptcy Docket.

VOTE: The motion passed unanimously.

### **Public Comments**

Based on HB94 requirements, a public comment period was offered, but none was given.

### **Adjournment**

There being no further business to come before the Committee, the meeting adjourned.

Respectfully submitted,

\_\_\_\_\_, Robert Nelson, Consumer Counsel

Accepted by the Committee this \_\_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_, Chairman